IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7969 OF 2007

M/s Hira Exports .. Petitioner

Versus

Union of India & anr ..Respondents

Mr.Simil Purohit with Mr.H.K.Sudhakara,Mr.Rohra i.b Khaitan & Co for Petitioners
Mr.A.M.Sethna with Ms.A.Gokhale and Mr.H.P.Chaturvedi for Respondents

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CORAM: F.I.REBELLO AND
R.S.MOHITE, JJ
DATED: 30th November, 2007

PC

1. The petitioner's name was entered in what is described as the ' Denied Entities List'. Provision for such a list is under rule 7 of the Foreign Trade Regulation Rules, 1993. It is the case of the petitioner that they were not given an opportunity before their name was included in the list. The effect of the name appearing in the 'Denied Entities List' has civil consequences. They were also not given an opportunity of being heard before their name was entered in the 'Denied Entities List.'

2. On behalf of the revenue, Mr.A.S.Shinde, Deputy Director General of Foreign Trade has filed an affidavit. It is his contention that name of the

petitioner was kept under 'Denied Entities List" on 12th May, 2006 on the basis of a letter dated 25th March, 2004 by the Director of Revenue Intelligence (DRI) Raigad who by his letter and/or communication reported that the petitioner was engaging in fradulent exports. It is contended that the guidelines for maintaining the list are incorporated in the circular dated 31st December, 2003. The reasons for placing the petitioner's name in the 'Denied Entities List ' was also passed at the behest of the Director General of Foreign Trade. We have now been given the reasons which reads as under :

> The letters received from the DRI, Raigad says that the office of the DRI on booking of the above case issued alert against various exporters for withholding their drawback/DEPB till completion of the verification of the authenticity of their exports.

3. We have heard learned counsel for the parties. The relevant para is para 2 of the guidelines for maintaining the 'Denied Entities List.' The same reads as under :

> " Instances have come to the notice when external agencies such as DRI, CBI, ED etc request for information in connection with some investigations or sometimes recommend licensing authorities to withold further licencing facilities to the firms under investigation. In such cases, if routine information has been called for, the same should be provided. If recommendations to suspend/cancel licenses are also contained

> in the communication then the information supplied should be adequately examined from the point of view denial of benefits under the Rules/Act. If evidence is found to be insufficient, agencies may be informed that more evidence will be needed before denial of the benefits can be pronounced under the Rules/Acts and will mention the reasons why the licensing authority thinks that there is no sufficient evidence to invoke rules relating to the refusal oflicense. If external agencies have supplied evidence to the satisfaction of the licensing authority, he shall place the firm in the DEL after issuing a speaking order against the erring firm without disclosing the source of information in the denial order."

4. Revenue relies on the said para for their action. A reading of para 2 would indicate that exercise in such cases has to commence when external agencies such as DRI recommends to the licensing authorities to withheld the licence facilities to the firms under investigation. There are two aspects of the matter. If there is recommendation to suspend/cancel the licences then it is for the authority invoking its jurisdiction to examine the information supplied and consider whether there is adequate material to deny the benefit under the Rules/Act. It is only then in such cases can the authority invoke its power under the rules. The other aspect of the matter is that the external agencies must have supplied the evidence to the satisfaction of the licensing authority. The competent authority then shall place the firm in the DEL after issuing a speaking order against the

erring firm without disclosing the source of information.

5. From a reading of the said provision name of the present petitioner could have been entered into the 'Denied Entities List' only after complying with the said procedure. According to the revenue itself there is no final order yet. What has been done is as a temporary measure. A consideration of para 2 would indicate that there is a power to suspend in compliance with the regulatory requirements. There must be material before the authority before it can proceed to pass an order.

6. In the instant case, from the affidavit filed on behalf of revenue there is nothing to show that there was any material except the bear communication received by the respondents from the DRI. The requirement of para 2 of the Circular dated 31st December, 2003 was not satisfied before the action was taken. In the light of that, the inclusion of the name of the petitioner in the 'Denied Entities List' was without authority of law and the order has to be set aside on this count alone.

7. The effect of the petitioner's name being entered in the 'Denied Entities List' results in civil consequences. The Circular itself in para 3 (c) contains a provision that the authority would

strictly adhere to the principles of natural justice. In other words, this would require giving an opportunity to the parties likely to be effected before passing the order. In the instant case, this was not complied with.

8. We further make it clear that if the respondents have otherwise power, it is always open to exercise the jurisdiction after applying the parameters as set out in para 2 of the Circular dated 31st December, 2003.

Rule is made absolute in terms of prayer clause (a). No order as to costs.

(F.I.Rebello,J)

(R.S.Mohite, J)